

**Federal Defenders
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September 1, 2016

By ECF

Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2104
New York, New York 10007

**Re: United States v. Jermaine Dore,
12 Cr. 45 (RJS); 16 Civ. 0699 (RJS)**

Dear Judge Sullivan:

I write on behalf of petitioner Jermain Dore to request a stay of the current schedule set by the Court with regard to Mr. Dore's motion to be filed pursuant to Title 28, United States Code, Section 2255, to vacate, set aside, or correct his sentence (the "Amended Petition"). The government consents to this request.

On July 13, 2016 (Cv. Dkt. No. 17), in response to a joint proposal of the parties, this Court ordered that petitioner's brief be due thirty days after the issuance of the Second Circuit's decision in either *United States v. Hill*, 14-3872 or *United States v. Barrett*, 14-2641. On August 3, 2016, the Circuit decided *Hill*, holding that Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3).

We believe that it would be appropriate to stay filing of Mr. Dore's 28 U.S.C. § 2255 Amended Petition pending the Circuit's disposition of *Barrett*. That case, an appeal by one of Mr. Dore's co-defendants, raises, *inter alia*, whether Hobbs Act conspiracy is a crime of violence under § 924(c)(3).

Further, a stay of the schedule pending the decision in *Barrett* would be

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consistent with the Circuit's decision to stay several of its own § 924(c) cases pending the outcome of that case. In numerous cases seeking leave to file second or successive § 2255 motions with respect to § 924(c) convictions, the Circuit has ordered stays pending the decisions in both *Hill* and *Barrett*, and has directed the movants to file briefs "within 30 days from the filing of decisions in *Hill* and *Barrett*, whichever is filed later." Order, *Copeland v. United States*, No. 16-1949 (July 20, 2016), Dkt. No. 19. *See also*, e.g., Order, *Parkes v. United States*, No. 16-1985 (July 20, 2016), Dkt. No. 17 (same).¹

The defense therefore respectfully requests that this Court continue to stay the briefing schedule for filing of Mr. Dore's Amended Petition pending *Barrett*. The government consents to this request.

Respectfully submitted,
/s/
Christopher Flood
Assistant Federal Defender
Tel.: (212) 417-8769

CC: AUSA Amy Lester, Esq. (by ECF)

¹ In addition, the Supreme Court may soon decide whether *Johnson v. United States*, 135 S. Ct. 2551 (2015) applies to § 924(c). *Lynch v. Dimaya*, S. Ct. No. 15-1948 (government's petition for certiorari, presenting question whether *Johnson* applies to residual clause in 18 U.S.C. § 16(b)'s definition of "crime of violence").